

STATE OF MICHIGAN
COURT OF APPEALS

TINA MURPHY, Personal Representative of the
Estate of BLAIR ALLEN MURPHY,

UNPUBLISHED
November 1, 2005

Plaintiff-Appellee,

V

No. 256655
Otsego Circuit Court
LC No. 03-10500-NO(D)

OTSEGO SKI CLUB- HIDDEN VALLEY, INC.,
and OTSEGO CLUB RENTAL MANAGEMENT,
INC., d/b/a OTSEGO CLUB PROPERTIES,

Defendant-Appellants.

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in favor of defendants under MCR 2.116(C)(8). Plaintiff's sole argument on appeal is that the trial court erred when it ruled that MCL 436.1801 (the dramshop act) preempted all of plaintiff's common-law claims. We affirm. This case is being decided without oral argument under MCR 7.214(E).

A grant of summary disposition under MCR 2.116(C)(8) for failure to state a claim is reviewed de novo. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone, and documentary evidence is not considered. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations in support of the claim are accepted as true, and all reasonable inferences or conclusions that may be drawn from the facts are construed in the light most favorable to the nonmoving party. *Adair, supra* at 119.

The dramshop act provides in relevant part:

(2) . . . A retail licensee shall not directly or indirectly, . . . or by . . . agent . . . sell, furnish or give alcoholic liquor to a person who is visibly intoxicated.

(3) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a . . . visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or

visibly intoxicated person . . . shall have a right of action . . . against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death.

* * * *

(9) The *alleged visibly intoxicated person shall not have a cause of action* pursuant to this section and a person shall not have a cause of action pursuant to this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(10) *This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor* [Emphasis added.]

Our Supreme Court has held that the dramshop act preempts common-law actions arising out of the furnishing¹ of alcohol by a liquor licensee. *Jackson v PKM Corp*, 430 Mich 262, 279; 422 NW2d 657 (1988). On their face, then, plaintiff's claims in this case are preempted by the *Jackson* Court's interpretation of § (10) of the dramshop act.

Nevertheless, plaintiff contends that § 10 of the dramshop act should be interpreted to apply only to able-bodied persons, that her decedent was not "able-bodied," and that therefore her claims under the dramshop act are not barred. We reject this contention. Plaintiff does not suggest that any language in the dramshop act is ambiguous. Absent an ambiguity, a statute is not subject to judicial construction or interpretation beyond the plain meaning of the statute. See *Mayor of Lansing v Pub Service Comm*, 470 Mich 154, 157; 680 NW2d 840 (2004) (unambiguous statutory language must be enforced as written). Indeed, the phrase "able-bodied person" is not found in the dramshop act, and plaintiff has not pointed out any language in the act itself that would suggest that the Legislature intended the dramshop act to only apply to "able-bodied persons."

We also reject plaintiff's argument that defendants should not be insulated from liability in this case because doing so would undermine the legislative intent of the dramshop act of discouraging sales to visibly intoxicated individuals. As set forth above, the plain language of the dramshop act bars plaintiff's claims. We are not free to ignore statutory language based merely on policy concerns. See *Mayor of Lansing, supra* at 161 ("[o]ur Legislature is free to make policy choices that, especially in controversial matters, some observers will inevitably think unwise").

¹ For brevity, we use the term "furnishing" broadly to refer to "the selling, giving, or furnishing of alcohol" by a liquor licensee within the meaning of MCL 436.1801.

The trial court did not err in ruling that the dramshop act preempted all of plaintiffs' claims. Because this issue is dispositive, we do not reach the alternative issue raised by defendants.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder